

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
ANDRE JAMEL DAVIS,

Plaintiff,

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>6/8/2023</u>

23-CV-00885 (JPC) (VF)

-against-

ORDERSGT. HORTON (4023), PO GONZALEZ (17878),
PO CALLE JEAN (9283), PO SEDITA (2923)

Defendants.

-----X

VALERIE FIGUEREDO, United States Magistrate Judge:

On February 2, 2023, Plaintiff Andre Jamel Davis, proceeding *pro se*, commenced the instant action asserting claims under 42 U.S.C. §§ 1983, 1985 and 1986 against Defendants Sergeant Horton, Police Officer Gonzalez, Police Officer Calle Jean, and Police Officer Sedita, alleging that these officers from the New York City Police Department (“NYPD”), assigned to the 50th Precinct in the Bronx, violated his rights by stopping him, detaining him, and towing his car, which was damaged while in police possession.

On February 6, 2023, the Honorable John P. Cronan, referred this case to me for general pretrial and dispositive motions. See ECF No. 2. Thereafter, Plaintiff attempted to effect service on Defendants, and filed affidavits on the docket memorializing such service. See ECF Nos. 4-7, 16-19.¹ On April 5, 2023, after Defendants failed to appear and the deadline for Defendants to answer or otherwise respond to the complaint had passed, Plaintiff submitted a request for entry of a Clerk’s Certificate of Default. See ECF No. 23; see also ECF Nos. 25-29 (affirmations

¹ Plaintiff utilized a process server, William Coachman, who served Defendants at the 50th Precinct Station House. There, Lieutenant Rivera accepted service on behalf of each Defendant.

supporting request for entry of certificate of default). On April 10, 2023, Plaintiff filed a proposed Clerk's Certificate of Default, which was signed and entered by the Clerk of Court on April 12, 2023. See ECF Nos. 24, 29.

However, while the affidavits of service submitted by Plaintiff indicate that such service was made at Defendants' place of business (the 50th Precinct in the Bronx), they do not indicate that the summons and complaint was also mailed to Defendants in accordance with CPLR § 308(2), which provides, in relevant part:

"Personal service upon a natural person shall be made by any of the following methods . . . (2) by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service.

See N.Y. C.P.L.R. 308.

Accordingly, service pursuant to New York state law was not properly effectuated, and the Clerk of Court is directed to vacate the Certificate of Default at ECF No. 29. Plaintiff may attempt to re-serve Defendants in compliance with CPLR § 308(2).

For further information or assistance, Plaintiff may contact the Southern District of New York Pro Se Office. Plaintiff may also consider contacting the New York Legal Assistance Group's ("NYLAG") Clinic for Pro Se Litigants in the Southern District of New York, which is a free legal clinic staffed by attorneys and paralegals to assist those who are representing

themselves in civil lawsuits in this court. The clinic is run by a private organization; it is not part of, or run by, the court. It cannot accept filings on behalf of the court, which must still be made by any pro se party through the Pro Se Intake Unit. A copy of the flyer with details of the clinic is attached to this order.

The Clerk of Court is directed to mail a copy of this order to (1) Plaintiff Andre Jamel Davis at 5951 Riverdale Avenue, #454, Bronx, NY 10471; (2) the New York City Law Department at 100 Church St, New York, NY 10007; and (3) the New York Police Department 50th Precinct Station House at 3450 Kingsbridge Ave, Bronx, NY 10463. The Clerk of Court is also directed to terminate the motion at ECF Nos. 23 and 37.

SO ORDERED.

DATED: New York, New York
June 8, 2023



VALERIE FIGUEREDO
United States Magistrate Judge

Copies to:

Andre Jamel Davis
5951 Riverdale Avenue
#454
Bronx, NY 10471
PRO SE

New York City Law Department
100 Church St
New York, NY 10007

New York Police Department 50th Precinct Station House
3450 Kingsbridge Ave
Bronx, NY 10463

Free Legal Assistance for Self-Represented Civil Litigants in Federal District Court for the Southern District Of New York

The NYLAG Legal Clinic for Pro Se Litigants in the Southern District of New York is a free legal clinic staffed by attorneys, law students and paralegals to assist those who are representing themselves or planning to represent themselves in civil lawsuits in the Southern District of New York. The clinic does not provide full representation. The clinic, which is not part of or run by the court, assists litigants with federal civil cases including cases involving civil rights, employment discrimination, labor law, social security benefits, foreclosure and tax.

To Contact the Clinic:

Call (212) 659-6190 or complete our online intake form (found here: <https://tinyurl.com/NYLAG-ProSe-OI>). A staff member will contact you within a few business days.

Those looking for assistance can also contact the clinic at the kiosk located across the hall from the pro se clinic office in the courthouse.

At this time, the clinic offers remote consultations only. Requests for in-person appointments will be reviewed on a case-to-case basis.

Location and Hours:

Thurgood Marshall United States Courthouse

Room LL22
 40 Foley Square
 New York, NY 10007
 (212) 659 6190

Open weekdays
 10 a.m. – 4 p.m.
 Closed on federal and court holidays

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